cases seem sound which hold that where equity has jurisdiction over the general subject-matter and is competent to administer relief, a failure to set up the defense of an adequate remedy at law is a waiver of it; for the "lack of jurisdiction" which can be waived in these cases is a far different thing from a "lack of jurisdiction" on account of being unable to take cognizance of the cause at all.

EVIDENCE—ADMISSIBILITY—EXHIBITION OF INFANT IN BASTARDY PROCEEDINGS.—The court permitted the plaintiff to introduce an illegitimate child three months old as evidence in bastardy proceedings, for the purpose of having the jury compare it with the defendant, the putative father, to detect resemblances between them. *Held,* the introduction of the child as evidence constituted reversible error. *Flores* v. *State* (Fla.), 73 South. 234. See NOTES, p. 490.

INSURANCE—HEALTH INSURANCE—FALSE REPRESENTATION OF SOUND HEALTH.—In an application for health insurance, the plaintiff innocently represented that he was in a sound condition physically, when in fact he had hernia, though to a very slight extent. It was provided by statute that no misrepresentation should bar recovery on a policy, unless fraudulent or material. *Held,* the plaintiff's misstatement will not vitiate the policy. *Hines* v. *New England Casualty Co.* (N. C.), 90 S. E. 131.

A warranty that the insured is in good or sound health is not broken, except by an ailment which is serious enough to affect and undermine his physcal constitution. See *Blackman* v. *United States Casualty Co.,* 117 Tenn. 578, 103 S. W. 784; *McDermott* v. *Modern Woodmen of America,* 97 Mo. App. 636, 71 S. W. 833. Only an ordinary degree of good health is required, and the question is usually one of fact for the jury. *French* v. *Fidelity & Casualty Co.,* 135 Wis. 259, 115 N. W. 869, 17 L. R. A. (N. S.) 1011; *Mays* v. *New Amsterdam Casualty Co.;* 40 App. D. C. 249, 46 L. R. A. (N. S.) 1108. See *Rathman* v. *New Amsterdam Casualty Co.,* 186 Mich. 115, 152 N. W. 983, L. R. A. (N. S.) 1915E, 980. But where the insured was in advanced stages of consumption, the question was not submitted to a jury. *Maine Benefit Ass'n* v. *Parks,* 81 Me. 79, 16 Atl. 339, 10 Am. St. Rep. 240. Pregnancy, in the case of a female applicant, being a normal function of a healthy body, is not a breach of such a warranty. *Merriman* v. *Grand Lodge Degree of Honor,* 77 Neb. 544, 110 N. W. 302, 8 L. R. A. (N. S.) 983. See *Rasicot* v. *Royal Neighbors of America,* 18 Idaho 85, 108 Pac. 1048, 29 L. R. A. (N. S.) 433. Nor, ordinarily, does asthma constitute a breach. *Blackman* v. *U. S. Casualty Co., supra.* Nor a cold, even though it later turns into pneumonia and causes the death of the insured. *Barnes* v. *Fidelity Mutual Life Ass'n,* 191 Pa. St. 618, 43 Atl. 341, 45 L. R. A. 264. See *Manhattan Life Ins. Co.* v. *Carder,* 82 Fed. 986.

When the applicant warrants that all statements by him are literally true, any misstatements as to health, however innocent, avoid the policy. *Cobb* v. *Covenant Mutual Benefit Ass'n,* 153 Mass. 176, 26 N. E. 230, 10 L. R. A. 666, 25 Am. St. Rep. 619; *Rathman* v. *New Amster-*

dam Casualty Co., supra. But this does not change the test as to what constitutes good health. *Goucher* v. *Northwest Traveling Men's Ass'n,* 20 Fed. 596. See *Rasicot* v. *Royal Neighbors of America, supra; McDermott* v. *Modern Woodmen of America, supra.* And the same test applies where there is no warranty, but the contract is conditioned upon the good health of the insured at the time of the delivery of the policy. *Barnes* v. *Fidelity Mutual Life Ass'n, supra; Manhattan Life Ins. Co.* v. *Carder, supra.* But where, as in the principal case, the answers are mere representations, or where they are stated to be true to the best of the applicant's belief, or some equivalent expression is used, none but a material or fraudulent misstatement avoids the policy. *Hann* v. *National Union,* 97 Mich. 513, 56 N. W. 834, 37 Am. St Rep. 365. But see *Maine Benefit Ass'n* v. *Parks, supra.* And where certain diseases are admitted in answers to specific questions concerning them, those diseases do not constitute a breach of a contemporaneous warranty of sound health. See *Metropolitan Life Ins. Co.* v. *Rutherford,* 95 Va. 773, 30 S. E. 383. A warranty of the applicant's good health made by a person other than the applicant necessarily means good health as evidenced by ordinary observation of outward appearance. *Grattan* v. *Metropolitan Life Ins. Co.,* 92 N. Y. 274, 44 Am. Rep. 372.

When the statement of good health is in an application for a renewal of an expired policy, it is to be construed by the standard applied to the original application. See *Massachusetts Benefit Life Ass'n* v. *Robinson,* 104 Ga. 256, 30 S. E. 918, 42 L. R. A. 261; *Peacock* v. *New York Life Ins. Co.,* 20 N. Y. 293. A slight illness between the lapsing of a policy and the reinstatement of the insured, which leaves no permanent effects, is not a breach of a warranty of sound health made at the time of reinstatement. *French* v. *Mutual Reserve Fund Life Ass'n,* 111 N. C. 391, 16 S. E. 427, 32 Am. St. Rep. 803. In any case, the burden of proof of the falsity is on the insurance company, and the mere fact that the insured was taken sick and died soon after the application was made does not necessarily raise a presumption that the representation was false. *Eclectic Life Ins. Co.* v. *Fahrenkrug,* 68 Ill. 463.

INSURANCE—ORAL RENEWAL—PROVISIONS OF OLD POLICY LIMITING AGENT'S AUTHORITY.—An insurance agent made an oral contract with the plaintiff to renew his policy, which was about to expire. The first policy contained limitations on the agent's authority which the defendant claimed should have been notice to the plaintiff, although the company informed the plaintiff that their agent was able to see to his interests. *Held,* the provisions limiting the agent's authority have no application to the agreement to renew. *National Live Stock Ins. Co.* v. *Cramer* (Ind.), 114 N. E. 427.

An agreement to renew means to renew upon the terms and provisions of the existing policy, where no change is mentioned. *Hay* v. *Star Fire Ins. Co.,* 77 N. Y. 235, 33 Am. Rep. 607. See *Western Assurance Co.* v. *McAlpin,* 23 Ind. App. 220, 55 N. E. 119; *Commercial Fire Ins. Co.* v. *Morris,* 105 Ala. 498, 18 South. 34. And even where the renewal is evidenced by a writing, although this may be considered a